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8
 Attorneys for Defendants
 9 CITY AND COUNTY OF SAN FRANCISCO, et al.

10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA

12 MERCY AMBAT, et al.

Case No. C 07-3622 SI

13 Plaintiffs,

NOTICE OF MOTION AND MOTION;
 14 vs.
 15 MEMORANDUM OF POINTS AND
 16 AUTHORITIES IN SUPPORT OF
 17 MOTION TO DISMISS INDIVIDUAL
 18 DEFENDANTS

F.R.C.P 12(b)(6)

CITY AND COUNTY OF SAN
 FRANCISCO, THOMAS ARATA,
 STEPHEN TILTON, RODERICK
 WALLACE, JOHN MINOR, EDWARD
 RUPPENSTEIN, JOHNA PECOT,

Hearing Date: October 3, 2008
 Time: 9:00 a.m.
 Judge: Hon. Susan Illston
 Place: Courtroom #10
 19th Floor
 Trial Date: None Set

19 Defendants.

1 **NOTICE OF MOTION AND MOTION**

2 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

3 PLEASE TAKE NOTICE that on October 3, 2008, at 9:00 a.m., or soon thereafter as counsel
 4 may be heard, in Courtroom 10, 19th Floor, 450 Golden Gate Ave., San Francisco, CA 94102,
 5 Defendants City and County of San Francisco, Thomas Arata, Stephen Tilton, Roderick Wallace,
 6 John Minor, Edward Ruppenstein, Johna Pecot (collectively "the City") will, and hereby do, move to
 7 dismiss with prejudice all the retaliation claims Plaintiffs purport to assert against the individually
 8 named Defendants Arata, Tilton, Wallace, Minor, Ruppenstein and Pecot. The City brings this
 9 motion on the ground that neither Title VII nor FEHA imposes individual liability for alleged
 10 retaliation.

11 This motion is based on this Notice of Motion and Motion, the supporting Memorandum of
 12 Points and Authorities filed herewith, the pleadings and papers on file in this action, and all evidence
 13 and argument that may be presented to the Court at the time of the hearing.

15 Dated: August 25, 2008

Respectfully submitted,

16 DENNIS J. HERRERA
 17 City Attorney
 18 ELIZABETH S. SALVESON
 19 Chief Labor Attorney
 20 MARGARET BAUMGARTNER
 21 JILL J. FIGG
 22 RAFAL OFIERSKI
 23 Deputy City Attorneys

25 By: _____ /s/
 26 RAFAL OFIERSKI

27 Attorneys for Defendants
 28 CITY AND COUNTY OF SAN FRANCISCO et al.

1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION**

2 **FACTUAL BACKGROUND**

3 This action relates to a Sheriff's Department policy providing that only female Sheriff's
 4 Deputies may staff jail "pods" housing female inmates. Plaintiffs contend that the staffing policy
 5 constitutes unlawful discrimination. Four of the thirty-five Plaintiffs also contend that the
 6 Department retaliated against them for complaining about the policy. Plaintiffs named as Defendants
 7 the City and County of San Francisco and six senior Department officers. (*See generally* Complaint
 8 for Damages and Injunctive Relief.)

9 Plaintiffs allege nine causes of action. In two of these causes of action, four Plaintiffs attempt
 10 to assert retaliation claims under Title VII and the Fair Employment and Housing Act ("FEHA").
 11 The four Plaintiffs attempt to assert these claims against both the City and the six individually named
 12 Defendants. (Complaint ¶¶ 128-136 [the Fifth and the Sixth Causes of Action].)

13 **ARGUMENT**

14 **I. THE INDIVIDUALLY NAMED DEFENDANTS ARE NOT LIABLE FOR ALLEGED
 15 RETALIATION UNDER TITLE VII AND FEHA.**

16 Plaintiffs' attempt to sue the six individually named Defendants for alleged retaliation fails as
 17 a matter of law. Title VII imposes no individual liability under any circumstances. *See* 42 U.S.C. §
 18 2000e-2(a); *Miller v. Maxwell's Int'l, Inc.*, 991 F.2d 583, 587 (9th Cir. 1993). This absolute limitation
 19 on individual liability applies to retaliation claims. *See Little v. BP Exploration & Oil Co.*, 265 F.3d
 20 357, 362 (6th Cir. 2001). FEHA likewise imposes no individual liability for retaliation. *Jones v.*
 21 *Lodge at Torrey Pines Partnership* (2008) 42 Cal.4th 1158, 1173-1174. Accordingly, the retaliation
 22 claims Plaintiffs allege in their Fifth and Sixth Causes of Action against the individual Defendants
 23 have no basis and must be dismissed.

24 **CONCLUSION**

25 The City respectfully requests that the Court grants its Motion and dismiss with prejudice all
 26 the retaliation claims alleged by Plaintiffs against the individually named Defendants in the Fifth and
 27 Sixth Causes of Action.

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1 Dated: August 25, 2008

Respectfully submitted,

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